United Nations S/2012/95

Security Council

Distr.: General
16 February 2012

Original: English

Letter dated 16 February 2012 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

I have the honour to transmit herewith decision Assembly/AU/Dec.397 (XVIII) (see annex), issued by the eighteenth Assembly of the African Union Ordinary Session, held in Addis Ababa on 29 and 30 January 2012, on the implementation of the Assembly decisions on the International Criminal Court.

Article 3 of this decision reiterates the request by the African Union to the United Nations Security Council to defer the proceedings initiated against President Omer Hassan Ahmed Al-Bashir of the Sudan in accordance with article 16 of the Rome Statute, and requests the African members of the Council to place the matter on the agenda of the Council.

In this connection, I would highly appreciate it if the present letter and its annex could be circulated as a document of the Security Council.

(*Signed*) Daffa-Alla Elhag Ali **Osman**
Permanent Representative

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Annex to the letter dated 16 February 2012 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

Decision on the progress report of the Commission on the implementation of the Assembly decisions on the International Criminal Court (ICC) Doc. EX.CL/710(XX)

The Assembly,

1. *Takes note* of the progress report of the Commission on the implementation of Assembly decisions on the International Criminal Court (ICC);

2. *Reiterates* its commitment to fight impunity in conformity with the provisions of article 4 (h) and (o) of the Constitutive Act of the African Union;

3. *Stresses* the need to explore ways and means to ensure that the request by the African Union (AU) to the United Nations (UN) Security Council to defer the proceedings initiated against President Bashir of the Sudan in accordance with article 16 of the Rome Statute of ICC on deferral of cases by the UN Security Council, be acted upon and, in this regard, *reiterates* its request to the UN Security Council and *requests* the African members of the UN Security Council to place the matter on the agenda of the Council;

4. *Recognizes* the efforts by the African members of the UN Security Council to initiate dialogue and discussions on the issue of placing the AU's request for deferral under article 16 of the Rome Statute, both with regard to the Sudan and Kenya on the UN Security Council agenda and *encourages* African non-permanent members of the UN Security Council to pursue their efforts in this regard;

5. *Requests* the Group of African States parties to the Rome Statute in New York and in The Hague as well as the African members of the United Nations Security Council to scrupulously follow up on the implementation of Assembly decisions on the ICC in collaboration with the Commission to ensure that African proposals and concerns are properly considered by the UN Security Council and the Assembly of States Parties to the Rome Statute;

6. *Reaffirms* its understanding that article 98 (1) was included in the Rome Statute establishing the ICC out of recognition that the Statute is not capable of removing an immunity which international law grants to the officials of States that are not parties to the Rome Statute, and by referring the situation in Darfur to the ICC, the UN Security Council intended that the Rome Statute would be applicable, including article 98;

7. *Also reaffirms* that by receiving President Bashir, the Republic of Malawi, like Djibouti, Chad and Kenya before her, were implementing various AU Assembly decisions on non-cooperation with the ICC on the arrest and surrender of President Omar Hassan Al-Bashir of the Sudan;

8. *Urges* all Member States to comply with Assembly decisions on the warrants of arrest issued by the ICC against President Bashir of the Sudan pursuant to article 23 (2) of the Constitutive Act and article 98 of the Rome Statute of the ICC;

9. *Regrets* that the AU's endorsement of two (2) persons as sole African candidates for the post of judge of the ICC was not respected by some member States and *requests* that this situation, as it repeats itself in several other instances, be considered by the Commission together with the Permanent Representatives Committee with a view to identifying ways and means of addressing it, in order to find a durable solution that will strengthen the African common positions and endorsements, and make appropriate recommendations to the Executive Council;

10. *Requests* the Commission to consider seeking an advisory opinion from the International Court of Justice regarding the immunities of State officials under international law;

11. *Also requests* the Commission to place the progress report of the Commission on the implementation of Assembly decisions on the ICC on the agenda of the forthcoming Meeting of Ministers of Justice and Attorneys General for additional input;

12. *Further requests* the Commission to report on a regular basis on the implementation of this decision to the Executive Council.